

BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES AND ENERGY

IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE BOARD ORDER )  
TO SHOW CAUSE RE: POTENTIAL ) DOCKET NO. 92-041  
PATTERN OF VIOLATIONS, INCLUDING )  
NOTICES OF VIOLATION N91-35-1-1 AND ) CAUSE NO. ACT/015/025  
N91-26-7-2 (#2), CO-OP MINING )  
COMPANY, BEAR CANYON MINE, ACT/015/025, )  
EMERY COUNTY, UTAH. )  
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ON WEDNESDAY, JANUARY 27, 1993, COMMENCING AT THE  
HOUR OF 10:00 A.M., A HEARING WAS HELD IN THE ABOVE MATTER  
BEFORE THE BOARD OF OIL, GAS AND MINING, 355 WEST NORTH  
TEMPLE, 3 TRIAD CENTER, SUITE 520, SALT LAKE CITY, UTAH  
84180-1203.

5980 South 300 East • Murray, Utah 84107

Certified Shorthand Reporters •

OUR FILE NO. 402292



REPORTED BY

INTERMOUNTAIN COURT REPORTERS

DANA MORSE, CSR, RPR

ORIGINAL

1 APPEARANCES

2  
3 CHAIRMAN: JAMES W. CARTER

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5 BOARD MEMBERS: RAYMOND MURRAY  
6 JUDY F. LEVER  
7 DAVE D. LAURISKI  
8 E. STEELE MCINTYRE  
9 JAY CHRISTENSEN  
10 KENT STRINGHAM

11 STAFF MEMBERS:

12 JANICE L. BROWN, Secretary of the Board  
13 LYNDIA S. JENSON, Secretary  
14 THOMAS A. MITCHELL, Assistant Attorney General  
15 RONALD J. FIRTH, Associate Director of Land Gas,  
16 Division of Oil, Gas and Mining  
17 LOWELL P. BRAXTON, Acting Director of the Division of  
18 Oil, Gas and Mining  
19 FRANK R. MATTHEWS, Petroleum Engineer  
20 BRAD G. HILL, Geologist  
21 RONALD W. DANIELS, Legislative Liaison

22 BUREAU OF LAND MANAGEMENT:  
23 ASSAD N. RAFFOUL, Petroleum Engineer  
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1       SLC, UTAH, WEDNESDAY, JANUARY 27, 1993, 11:00 A.M.

2                   P R O C E E D I N G S

3       MR. CARTER: This brings us to Agenda Item No. 4.

4       Now is the time and place set for hearing in Docket No.  
5       92-041, Cause No. ACT/015/025 in the matter of the Board  
6       Order to Show Cause Re: Potential pattern of  
7       violations, including Notices of Violation N91-35-1-1  
8       and N91-26-7-2, Part 2, Co-Op Mining Company, Bear  
9       Canyon Mine, ACT/015/025, Emery County, Utah.

10       This matter was continued, actually has been  
11       continued twice. The Board -- the hearing examiner --  
12       actually, a panel of the Board consisting of myself and  
13       Mr. David Lauriski heard argument in this matter  
14       relating to the issue of the scope of testimony and  
15       evidence which could be presented by Co-Op Mining  
16       Company in its opposition to the State's initial  
17       determination that there appears to be a pattern of  
18       violations, and I'll rely on Mr. Lauriski to fill in any  
19       gaps that I leave out here.

20       Subsequent to taking that argument we had the  
21       opportunity to discuss the argument and the issues  
22       raised with a larger panel of the Board which included  
23       all Board members, except for Mr. Stringham and  
24       Mr. McIntyre. That was at our interim Board meeting on  
25       January 11th and the consensus of the Board at that

1 meeting, and I do this with apologies to Mr. McIntyre  
2 and Mr. Stringham, but I think they'll agree with us,  
3 the consensus of the Board is that allowing evidence or  
4 testimony with regard to the penalty points assessed or  
5 the level of culpability relating to the N.O.V.'s which  
6 are the subject of the pattern of violations  
7 investigation would constitute a collateral or could  
8 constitute a collateral attack on those N.O.V.'s and  
9 that the Board would disallow that.

10 Our reasoning is that the notices of violation are  
11 actually a procedure of the Board. The Board delegates  
12 authority to assess points to a hearing examiner who  
13 reviews the N.O.V. after the Division has reviewed the  
14 N.O.V. and levied its assessment. So the points  
15 assessed in the N.O.V. in the two subject N.O.V.'s were,  
16 in fact, Board orders so the Board is not going to  
17 entertain a rereview of those aspects of this order.

18 Another issue that was raised by Co-Op during the  
19 argument was that the terminology which is contained in  
20 the Division regulations which relates to assessment of  
21 penalty points, the words used are not exactly the same  
22 words used in determining whether or not a pattern of  
23 violation exists. And I don't have in front of me the  
24 exact words, but the Board has determined that those are  
25 essentially identical types of terminology and that

1 under the current Division practices the assessment of  
2 16 points or more does constitute that greater level of  
3 liability or culpability that is contemplated in the  
4 pattern of violations regulations and we, therefore,  
5 reject the argument that the Board must make a new -- a  
6 finding of wilful failure to or unwarranted failure to  
7 abate or to avoid the violation.

8 So, in sum, we are ruling that when we reconvene in  
9 our February hearing to continue this matter, the Co-Op  
10 hearing, Co-Op may present whatever evidence or  
11 testimony it deems appropriate, but the Board will not  
12 entertain evidence or testimony relating to the penalty  
13 points assessed in the two subject N.O.V.'s nor with  
14 regard to the circumstances surrounding those N.O.V.'s  
15 as those are final Board orders which weren't appealed.  
16 This will make for a shorter hearing.

17 (Discussion off the record.)

18 MR. CARTER: Board member Lever's reminded me that  
19 there may be facts relating to the N.O.V.'s issued, the  
20 circumstances of the N.O.V.'s which will bear on whether  
21 or not those N.O.V.'s are sufficiently similar to one  
22 another to constitute a pattern of violation so to that  
23 extent testimony with regard to the similarity or  
24 dissimilarity of those events would be allowed but not  
25 with regard to the level of negligence or the degree of

1 culpability. Mr. Richards?

2 MR. RICHARDS: The Board's counsel will be  
3 circulating a Board draft order in the next half hour  
4 and I think we can spell that out very clearly in the  
5 written orders that we can send to counsel.

6 MR. CARTER: All right. So this matter then will  
7 be continued to the February hearing of the Board at  
8 which time we'll take a continued argument and evidence  
9 from the State and from Co-Op Mining Company.

10 (Concluded at 11:05 am.)

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STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )


I, DANA MARIE MORSE, a Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public for the State of Utah, residing in Utah, certify:

That the hearing of Oil, Gas and Mining was taken before me pursuant to notice at the time and place therein set forth.

That all objections made and all proceedings had at the time of the hearing were recorded stenographically by me and were thereafter transcribed, and I hereby certify that the foregoing transcript is a full, true, and correct record of my stenographic notes so taken;

I further certify that I am neither counsel for or related to any party to said action in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my official seal this 27th day of January, 1993.

  
DANA MARIE MORSE  
Certified Shorthand Reporter,  
Registered Professional Reporter,  
and Notary Public in and for the  
County of Salt Lake, State of Utah.

My Commission Expires:  
June 13, 1994

